IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7189 of 2003
with
SPECIAL CIVIL APPLICATION No 6888 of 2003
with
SPECIAL CIVIL APPLICATION No 6889 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHUDHA SEVA SAHAKARI MANDALI LTD.
Versus
ELECTION OFFICER & CITY DEPUTY COLLECTOR

Appearance:
1. Special Civil Application No. 7189 of 2003
MR KS JHAVERI for Petitioner No. 1-14
..... for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 02/06/2003

COMMON ORAL JUDGEMENT

Rule. Mr.N.C.Sood, learned AGP waives service of Rule.

2) Heard Mr.Kalpesh Jhaveri, learned advocate for the petitioner in all the three matters and learned AGP, Mr.N.C.Sood for the respondent.

3) Mr. Jhaveri has produced an amendment and the same is taken on record. The main challenge in this petition is against the notice issued by the Election Officer, the respondent herein, on 16-5-2003, which was issued on the basis of the complaint received by the Election Officer from one Mr.Arvindbhai V.Patel and pursuant to the said notice reply was filed by the petitioner in Special Civil Application No.7189 of 2003, which came up for hearing before this Honourable Court on 28-5-2003 and interim relief was granted in terms of para 6-B of the petition. The same is continued till this date by virtue of subsequent order passed on 30-5-2003.

4) After hearing the learned advocates appearing for the respective parties, this Court is of the view that at present the main challenge is against the show cause notice issued by the respondent. The respondent has not taken any decision so far and the matter is still open at large before the respondent. Normally, this Court is not inclined to interfere at the show cause notice stage, when the matter is still under consideration before the concerned authority. However, looking to the facts of the present case, the challenge to the notice was made only on the ground that the respondent has no jurisdiction to issue the said notice. It was further submitted by the learned advocate for the petitioner that the respondent is acting malafide and once the name of the petitioner is deleted from the voters list, it is not open for the petitioner to challenge the said notice.

5) On the other hand, Mr.Sood, learned AGP has submitted that the respondent has acted under the powers which have been given to him and there is no justification to interfere in the election process, which has already commenced.

6) I have gone through the submissions made on behalf of the respective parties and also gone through the authorities cited by the learned advocate for the respective parties and without expressing any opinion on the merits of the matter or on the submissions made on behalf of the respective parties. I am of the opinion that the interest of justice would better be served, if

the respondent-authority is directed to take appropriate decision in accordance with law, keeping in mind the objection received and the reply tendered by the petitioner. If any decision is taken by the respondent-authority adversely affecting the petitioner, the same should not be implemented for a period of four days from the date of communication of the order to the petitioner and in that case, it is open for the petitioner to challenge the said decision before the appropriate forum.

7) Since this Court has not gone into the merits of the matter, the respondent will decide the issue in accordance with law, without being influenced by the interim order passed earlier by this Court. The respondent authority is directed to pass reasoned order after taking into consideration all the contentions raised by the petitioner before him. In the result, these three petitions are accordingly disposed of. Rule is discharged with no order as to costs.

Direct service is permitted.

(K.A.Puj, J.)
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